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C O N F I D E N T I A L SECTION 01 OF 02 ISLAMABAD 005192

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TAGS: PREL PGOV PHUM PK

SUBJECT: GOP STEPS TOWARD NORMALIZATION

Classified By: Anne W. Patterson, for reasons 1.4 (b)(d)

¶1. (C) Summary. Pakistan's Attorney General outlined to Polcouns several steps in the GOP plan to restore constitutional normalcy. The constitution will be fully restored and the state of emergency will be lifted on December 15; all judges will re-take an oath to uphold the constitution; political detainees will be released before December 15; and Geo TV could be back on the air in the next few days. The AG claimed that the latest amendments to the Provisional Constitutional Order (PCO) had been devised to give Musharraf protection from treason charges. The Embassy has been working behind the scenes with the lawyers' and human rights communities on ideas to restore some of the judiciary; the AG will propose a similar idea to return 5-6 of the deposed Supreme Court justices to the bench. The Saudi Ambassador was allowed to visit former Chief Justice Chaudhry to offer a government-sponsored plan to support the reinstatement of other judges, but Chaudhry appears to have spurned the proposal. If the government does convince other judges to return, this could give the lawyer's community enough of a victory to back off current protests and allow the courts to function normally again. End Summary.

¶2. (C) Polcouns met December 7 with Pakistan Attorney General Malik Qayyum, who outlined the GOP's plans to move toward legal normalcy. Qayyum said he would recommend to President Musharraf that the constitution be fully restored on December 15, a day earlier than announced, because December 16 (the day Bangladesh declared its independence from Pakistan) would not be the best choice.

Detainees to be Released

¶3. (C) According to Qayyum, all persons detained under the State of Emergency, including Aitzaz Ahsan and other political activists would be released, probably even before December 15. (Note: This week Ahsan issued a public call for all political candidates to promise to defend the judiciary; he suggested that all bar associations base their political support for candidates on these promises. Although Ahsan is a Pakistan People's Party leader, Benazir Bhutto responded publicly that she did not support this proposal.)

Geo TV

¶4. (C) See also septel. On the subject of Geo TV, Qayyum

said he had counseled the Director of the Pakistan Electronic Media Authority (PEMRA) that its restrictions on Geo would not hold up in court. The Sindh High Court had thrown out Geo's appeal, but the rejection was based on technical grounds that the Court had no jurisdiction during the State of Emergency. Qayyum said he expected Geo to be fully back on the air in Pakistan within the next two-three days.

Restoring the Judiciary

¶ 15. (C) Polcouns noted the USG had called for the release of all detained judges but had carefully refrained from demanding that the former Chief Justice be reinstated. Providing a copy of the American Bar Association's letter to President Musharraf, she said there was growing pressure to restore the judiciary. The Embassy had been approached in the last few weeks from various members of the legal and human rights community about the need to find a way forward, and we wondered if the government had plans to address this problem. Qayyum agreed there was a problem, saying that he had been trying to increase the number of Supreme Court judges from 11 to the full court of 17, but that there were not enough qualified candidates. The decision (which Qayyum claims to have opposed) to also remove provincial high court judges had exacerbated the situation. Qayyum claimed that the Supreme Court was working normally again but admitted that other courts were suffering due to continued lawyers' boycotts and the lack of experienced judges.

¶ 16. (C) Qayyum said he was going to suggest December 7 to Chief Justice Dogan the possibility of bringing back 5-6 members of the former Supreme Court to fill the current six

ISLAMABAD 00005192 002 OF 002

vacancies. Five former judges had already approached the AG saying they would come back once the constitution was restored. Because Pakistan People's Party leader Benazir Bhutto had refused to back the restoration of the former Chief Justice, Qayyum predicted that these other judges and the lawyers could not continue to remain outside the system. The ideal time to bring the judges back, said Qayyum, would be on December 15 when all the judges will re-take an oath to the constitution (vs. to the President as was required under the November 3 PCO).

¶ 17. (C) Regarding pensions for the deposed judges, Qayyum confirmed press reports that the President would sign a decree ensuring that the deposed judges do receive a pension, even if they do not officially resign or retire. There was a precedent for doing this when Musharraf granted pensions for the judges who refused to swear an oath to the President after the 1999 coup. Qayyum told the press December 7 that the benefits would include 80 percent of the salary of a judge as pension, 200 liters of gas for his private cars, a driver, medical facilities and a provision to set up a private office in his residence.

¶ 18. (C) Separately, on December 7, Saudi Ambassador Ali Awadh al-Asseri met deposed Chief Justice Iftikhar Chaudhry, who remains under house arrest in Islamabad. According to press reports, al-Asseri delivered a message from the GOP that Chaudhry would be "duly accommodated" if he withdrew his demand for reinstating judges who had revised to take an oath under the PCO. There is no indication Chaudhry accepted this offer. In fact, according to press reports, Chaudhry politely rejected al-Asseri's invitation to perform the Hajj, saying that he was needed in Pakistan. This is the first time the GOP has allowed any high-level visitors to meet with Chaudhry since November 3.

Immunity for Musharraf

¶ 19. (C) Asked about Musharraf's need to have a two-thirds majority of the next National Assembly ratify the PCO, Qayyum

proudly claimed that the latest amendment to the PCO had been drafted specifically to deal with this situation by making it another amendment to the constitution (270.AAA). The Supreme Court had blessed the PCO, so to reverse this action, both the National Assembly and the Senate would have to vote by a two-thirds majority to change the constitution. Even if the opposition controls the next National Assembly, the Senate is not up for election until 2009, so the President's supporters can block Senate action.

Elections Commission

¶10. (C) Qayyum said he recognized the need to fill the outstanding vacancies on the Election Commission and agreed that allowing the opposition to either name the new members or at least consult would be the best way to proceed. He promised to look into when and how the additional Commission members could be named.

¶11. (C) Comment: The GOP is working hard to restore the image of normality to Pakistan because Musharraf needs for the upcoming elections to be seen as legitimate. The Embassy has been working behind the scenes with the human rights and lawyers' communities to find a way forward to get the judiciary functioning again. Given Musharraf's personal animosity toward the former Chief Justice, his reinstatement is not going to happen. But returning at least some of the other judges could give the lawyer's community enough of a victory to back off current protests and allow the courts to function normally again. It is unclear whether the reinstatement of only some judges would satisfy Pakistan Muslim League-N leader Nawaz Sharif's demands for restoration of the judiciary.

PATTERSON